GAHC010180462015

2026:GAU-AS:11894

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./273/2015

THE STATE OF ARUNACHAL PRADESH
REPRESENTED BY GENERAL MANAGER, STATE TRANSPORT SERVICES,
GOVT. OF ARUNACHAL PRADESH, NAHARLAGUN

VERSUS

SMT. REJINA SONOWAL and 3 ORS,
W/O LATE DIPEN SONOWAL

Advocate for the Petitioner : GA, AP,

Advocate for the Respondent : MR.A K GUPTA,

Linked Case : CO/1/2018

SMT REJINA SONOWAL
R/O HEBEDA BANGALI GAON
P.O. AND P.S. MAKUM
DIST. TINSUKIA
ASSAM.

VERSUS

THE STATE OF ARUNACHAL PRADESH
REPRESENTED BY GENERAL MANAGER
STATE TRANSPORT SERVICES
GOVT. OF ARUNACHAL PRADESH

NAHARLAGUN
ARUNACHAL PRADESH.

Advocate for : MR. A K GUPTA
Advocate for : MR. N N B CHOUDHURY appearing for THE STATE OF ARUNACHAL PRADESH

BEFORE

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

Date on which judgment is reserved	: **N/A.**
Date of pronouncement of judgment	: **20.08.2026**
Whether the pronouncement is of the operative part of the judgment?	: N/A.
Whether the full judgment has been pronounced?	: Yes.

JUDGMENT & ORDER (ORAL)

Heard Mr. M.R. Adhikary, learned Addl. Sr. Govt. Advocate, Arunachal Pradesh appearing for the appellant/State of Arunachal Pradesh. Also heard Mr. A.K. Gupta, learned counsel for the respondents/claimants/cross-objectors.

2. By way of this appeal filed under Section 173 of the Motor Vehicle Act, 1988 (as amended), the appellant is assailing the judgment and order dated 22.08.2014, passed by the learned Member, MACT, Tinsukia in MAC Case No.61/2013, whereby a sum of Rs. 15,85,000/- (Rupees fifteen lakhs eighty-five thousands) only with interest @ 6% p.a. from the date of filing of the claim petition till its realization, was awarded as compensation for the death of deceased Dipen Sonowal in a motor vehicle accident in favour of the claimants/respondents/cross-objectors. The claimants on the ground that the conventional head have not been followed, in terms of the decision of the Hon'ble Apex Court in the case of ***National Insurance Company Limited v. Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***, as well as no compensation for future prospects in terms of the Hon'ble Apex Court's decision in ***Sarla Verma (Smt) and Ors. Vs. Delhi Transport Corporation and Anr.,*** reported in ***(2009) 6 SCC 121,*** read with ***Pranay Sethi*** (supra) having been awarded, filed the instant cross-objection. Both the matters are taken up together for final disposal.

3. The brief fact of the case is that on 04.03.2011 at about 12:20 p.m., the deceased Dipen Sonowal, who was driving the auto rickshaw bearing registration No. AS-23E-6068 along with passengers, upon being hit by a bus bearing registration No. AR-02-0311, which was coming towards them in a rash and negligent manner, sustained grievous injuries on their persons. The deceased, later on, died on the same day in the Tinsukia Civil Hospital. Accordingly, a case was registered at the jurisdictional police station vide Tinsukia P.S. Case No. 150/2011, u/s. 279/337/338/304(A)/427 I.P.C. against the driver of the offending bus for his rash and negligent driving.

4. Thereafter, the legal heirs of the deceased, i.e., wife Smti. Rejina Sonowal, along with daughter Anamika Sonowal, son Manab Pratim Sonowal, and mother Smti. Lalita Sonowal filed the claim petition before the MAC Tribunal, Tinsukia. The Tribunal accordingly issued notice to the opposite party No.1 (the driver of the offending bus) and the General Manager, State Transport Service, Govt. of

Arunachal Pradesh (appellant herein).

5. Upon receipt of notice, the appellant as well as the opposite party No.1/the driver did not appear to contest the case. Accordingly, the case proceeded *ex parte* by the orders dated 03.08.2013 and 23.05.2013, respectively. Thereafter, upon two witnesses examined on behalf of the claimants' side, along with documents exhibited, the learned Tribunal, upon perusing the evidence as well as the documents available in the case record and having found that the claimants have proved their case, *prima facie,* that the accident occurred due to the rash and negligent driving of the driver of the offending bus, the claimants are entitled to get compensation from the appellants.

6. The relevant paragraphs of the said judgment read as under:

> "*8. After going through the evidence as well as documents available in the case record vide Exts.1 to 7, I have found that claimants proved their case prima facie that the accident occurred due to rash and negligent driving of the driver of the bus bearing registration No. AR-02-0311 and as such, claimants are entitled to get compensation from the opposite parties.*
>
> *9 Now, coming in the question of compensation, I find that the claimant claimed Rs. 30,00,000/-.*
>
> *10. For assessing the compensation, the claimants are required to establish three things in the instant case (i) age of the deceased, (ii) income of the deceased, (iii) number of dependents. The Claimant No.1 i.e. wife of the deceased deposed that the age of the deceased Dipen Sonowal at the time of his death was 35 years. But, the claimants side did not file any documentary evidence regarding the age of the deceased. On the other hand, the age of the deceased is mentioned in the post mortem examination report as 35 years. In such a situation, the age of the deceased is to be taken into account as mentioned in the post mortem examination report. So, I am constrained to hold that the age of the deceased was 35 years at the time of his death.*
>
> *11. Now, the multiplier factor to be adopted in this case as per second schedule to Sec. 163-A of the Act. In view of the above age of the deceased, multiplier 16 has to be taken for ascertaining the loss of dependency in the instant case as per the decisions of Sarala Verma (SMT) and others -Vs-Delhi Transport Corporation reported in (2009) 6 SCC 121 and Amrit Bhanu Shali and Ors. -Vs- National Insurance Co. Ltd. reported in (2012) ACJ 2002. Coming to the second*

component, the claimants deposed that the deceased Dipen Sonowal was a driver and he used to earn Rs. 15,000/- p.m. But, no document has been submitted by the claimants to prove the income of the deceased. Hence, in absence of any positive evidence of income, notional income of Rs. 10,000/- is taken as the income of the deceased. So far the third component is concerned, the deceased left behind four dependents viz. wife, children and mother.

12. As per the decision of Sarala Verma (SMT) and others -Vs- Delhi Transport Corporation reported in (2009) 6 SCC 121, the deduction towards personal and living expenses of the deceased should be one-fourth (1/4th) where the number of dependents is in between 4 to 6. Out of this amount of Rs. 10,000/-, after deducting 1/4" (one-fourth) on account of personal expenses of the deceased come to Rs. 7500/- p.m. i.e. annual pecuniary loss Rs. 90,000/--Thus, the compensation comes to as follows:-

Monthly income : Rs. 10,000/-

After 1/4th deduction: Rs. 7500/- (10,000/- + 4 = 2500)
(Rs. 10,000-2500 = 7500)

Now Annual Income: Rs.90,000/- (7500/- x 12)".

7. Accordingly the compensation was assessed as under:-

Loss of dependency:	= Rs. 14,40,000.00
Funeral expenses:	=Rs. 25,000.00
Loss of consortium:	= Rs. 1,00,000.00
Loss of estate:	= Rs. 5,000.00
Transportation of body of the deceased:	=Rs. 5,000.00
Love and affection:	=Rs. 10,000.00
TOTAL:	=Rs. 15,85,000.00

8. Accordingly, by judgment and award dated 22.08.2014, the claimants were awarded a sum of Rs.15,85,000/- with interest @ 6% per annum from the date of filing of the claim petition till realization. The appellant was directed to satisfy the award within 90 days.

9. Mr. M.R. Adhikary, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing for the appellant, submits that although the appellant had received notice of the claim petition on 09.07.2013 and had engaged an Advocate, the said Advocate did not appear before the learned Tribunal. It is submitted that the appellant was, therefore, deprived of an effective opportunity to contest the claim and that the *ex parte* award deserves interference.

10. *Per contra*, Mr. A.K. Gupta, learned counsel appearing for the respondents/claimants/cross-objectors, submits that the appellant admittedly received notice and had also engaged counsel, but neither the appellant nor the engaged counsel took any effective steps before the learned Tribunal. It is submitted that no application for setting aside the *ex parte* proceedings was filed before the learned Tribunal and, therefore, no interference is called for in the appeal.

11. Learned counsel further submits that the learned Tribunal failed to award any amount towards future prospects and also failed to determine the compensation under the conventional heads in accordance with the law laid down by the Apex Court in ***Pranay Sethi*** (supra). Accordingly, enhancement of the compensation is sought through the cross-objection.

12. I have considered the submissions advanced by the learned counsel for the parties and perused the materials available on record, including the impugned judgment and award, the memorandum of appeal and the cross-objection.

13. Points for Determination

In view of the rival submissions advanced by the learned counsel for the parties, the following points arise for determination:

(i) Whether the ex parte judgment and award passed by the learned Tribunal calls for interference?

(ii) Whether the claimants/cross-objectors are entitled to enhancement of the compensation awarded by the learned Tribunal and, if so, to what extent?

(iii) What order?

14. **<u>Point No. (i)</u>**: Whether the *ex parte* judgment and award calls for interference?

14.1. It is contended by the appellant that upon receiving notice of the claim petition, an Advocate was engaged on behalf of the appellant on 09.07.2013 before the learned Tribunal to represent the appellant in the claim petition. It is true that a party should not ordinarily be made to suffer for the negligence or inaction of its counsel, particularly where such negligence has resulted in denial of an effective opportunity of hearing. However, the facts of the present case do not present a situation where the appellant was completely unaware of the proceedings or was deprived of an opportunity to contest the claim on account of the sole omission of its counsel. The appellant admittedly received notice of the claim petition and thereafter engaged an Advocate to represent it. It appears from the appeal memo that the appellant was having knowledge of the date of the proceedings before the Tribunal. It further appears from the appeal memo that the office of the appellant was aware of the date fixed in the proceedings. Despite being aware of the proceedings, the appellant itself took no further steps to ascertain the progress of the case or to ensure its representation before the learned Tribunal. The proceedings consequently continued *ex parte*.

14.2. More importantly, the claimants did not secure the award merely on account of the absence of the appellant. They examined two witnesses and exhibited documents in support of their claim. The learned Tribunal, upon consideration of the evidence so led, recorded a finding that the accident had occurred due to the rash and negligent driving of the offending bus and thereafter assessed the compensation payable to the claimants. Thus, the claim was adjudicated on the basis of evidence led by the claimants and not merely on account of the appellant remaining absent.

14.3. Undoubtedly, an order passed by the learned Tribunal without affording due and effective opportunity of hearing to a respondent party cannot ordinarily be sustained, as the same would offend the principles of natural justice. In the present case, however, the appellant had notice of the proceedings, had engaged counsel and was aware, through its own office, of the date on which the matter was fixed before the learned Tribunal. Despite the same, no steps were taken by the appellant to participate in the proceedings or to ensure its representation. The appellant also did not take any steps before the learned Tribunal for setting aside the *ex parte* proceedings. In such circumstances, the appellant cannot now contend that the award is vitiated for want of an opportunity of hearing.

14.4. The fact that the appellant is a State authority cannot, by itself, absolve it of the responsibility of diligently pursuing proceedings of which it had due notice. Once the appellant had engaged counsel and its own office had been informed of the date fixed before the learned Tribunal, it was equally incumbent upon the appellant to take reasonable steps to ensure that its case was duly represented. The consequence of its subsequent inaction, therefore, cannot be attributed solely to the negligence or default of the learned counsel.

14.5. More importantly, the claimants did not secure the award merely by reason of the appellant remaining absent. They examined two witnesses and exhibited documents in support of their claim, upon consideration of which the learned Tribunal recorded its findings regarding the accident, negligence and the entitlement of the claimants to compensation. Thus, the claim was adjudicated on the basis of evidence led before the learned Tribunal.

14.6. In the facts and circumstances noticed above, this Court finds no violation of the principles of natural justice warranting interference with the impugned judgment and award. Point No. (i) is accordingly answered against the appellant.

15. Point No. (ii): Whether the claimants/cross-objectors are entitled to enhancement of compensation?

15.1. The cross-objection, however, stands on a different footing. It is not in dispute that the deceased was 35 years of age at the time of the accident and was self-employed as an Auto Rickshaw driver. The learned Tribunal, in the absence of documentary evidence regarding his income, assessed his monthly income at Rs.10,000/-. There is no compelling reason, on the materials available on record, to interfere with the said assessment.

15.2. The learned Tribunal, however, did not make any addition towards future prospects. In ***Pranay Sethi*** (supra), the Apex Court, while laying down the principles governing the determination of compensation, held, inter alia, that in the case of a deceased who was self-employed or on a fixed salary, an addition of 40% of the established income should be made towards future prospects where the deceased was below 40 years of age. The Apex Court further approved the multiplier indicated in ***Sarla Verma*** (supra) and prescribed the appropriate amounts under the conventional heads.

15.3. In the present case, the deceased was 35 years of age. Accordingly, an addition of 40% towards future prospects is required to be made to the established monthly income of Rs.10,000/-.

The computation would, therefore, be as follows:

Monthly income	Rs.10,000/-
40% towards future prospects	Rs.4,000/-
Monthly income including future prospects	Rs.14,000/-
Deduction towards personal and living expenses: (Since the deceased left behind four dependants, 1/4th is required to be deducted towards his personal and living expenses)	Rs.3,500/-
Monthly contribution to the family	Rs.10,500/-
Annual loss of dependency: Rs.10,500/- × 12	Rs.1,26,000/-
Considering the age of the deceased to be 35 years, the appropriate multiplier is 16. Loss of dependency: Rs.1,26,000/- × 16.	Rs.20,16,000/-

15.4. The compensation under the conventional heads is also required to be reassessed in accordance with ***Pranay Sethi*** (supra). The claimants would accordingly be entitled to Rs.15,000/- towards funeral expenses, Rs.15,000/- towards loss of estate and Rs.1,60,000/- towards loss of consortium for the wife, two children and mother of the deceased. Accordingly, the compensation is reassessed as follows:

Head	**Amount**
Loss of dependency	Rs.20,16,000/-
Funeral expenses	Rs.15,000/-
Loss of estate	Rs.15,000/-
Loss of consortium	Rs.1,60,000/-
Total	**Rs.22,06,000/-**

15.5. Thus, the claimants are entitled to a total compensation of Rs.22,06,000/- (Rupees twenty-two lakhs six thousand) only. Accordingly, Point No. (ii) is answered in favour of the claimants/cross-objectors.

16. <u>**Point No.**</u> (iii): Relief

16.1. In view of the findings recorded hereinabove, the appeal preferred by the appellant fails and is accordingly dismissed.

16.2. The cross-objection filed by the claimants/cross-objectors is allowed.

The judgment and award dated 22.08.2014 passed by the learned Member, MACT, Tinsukia, in MAC Case No.61/2013, is modified to the extent that the claimants shall be entitled to compensation of Rs.22,06,000/- (Rupees twenty-two lakhs six thousand) only, instead of Rs.15,85,000/- awarded by the learned Tribunal.

16.3. The enhanced amount shall carry interest at the rate and from the date as awarded by the learned Tribunal.

16.4. The appellant shall deposit/pay the aforesaid awarded amount, after deducting any amount already paid or deposited pursuant to the impugned award, within a period of three months from the date of receipt of a certified copy of this judgment, together with the interest as directed by the learned Tribunal.

17. The appeal and the cross-objection stand disposed of in the above terms.

18. Send back the TCR along with a copy of this judgment forthwith.

JUDGE

Comparing Assistant